

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

THE DETROIT FREE PRESS, INC.

Employer-Petitioner

and

CASE 7-UC-489

NEWSPAPER GUILD OF DETROIT,
LOCAL 22, THE NEWSPAPER GUILD,
AFL-CIO

Union

APPEARANCES:

Michael J. Rybicki, Attorney and Robert L. Jackson III, Attorney., of Chicago, Illinois, for the Employer-Petitioner.

John G. Adam, Attorney, of Southfield, Michigan, for the Union.

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,¹ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The Employer and Union filed briefs in this matter, which have been carefully considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization claims to represent certain employees of the Employer.

4. The Employer seeks by its unit clarification petition to exclude approximately 26 historically included unit employees because they are supervisors under Section 2(11) of the Act. The employee clarifications sought to be excluded are: assistant metro editor, assistant business editor, deputy design director, assistant youth editor,² assistant sports editor, preps sports coordinator, assistant features editor, deputy copy chief, deputy director of new media, and director of library research.³ The Union contends that these positions are properly included in the certified unit of employees it currently represents. The Employer and the Union have a history of collective bargaining extending over 40 years and have been parties to a series of collective bargaining agreements covering the bargaining unit and positions at issue, the last of which was effective by its terms from May 1, 1992 to April 30, 1995. The Employer filed the instant petition on November 1, 1996, however, the undersigned held the petition in abeyance due to pending unfair labor practice charges arising out of an unfair labor strike that lasted from approximately July 1995 to February 1997. On April 24, 1998, the Employer unilaterally removed the positions at issue from the bargaining unit.⁴

The Employer publishes a daily newspaper Monday through Friday. On Saturday and Sunday, the Employer and the Detroit News publish a combined paper.⁵ The Employer is part of the Detroit News Agency, hereinafter “DNA”, which was formed pursuant to a joint operating agreement with the Detroit News. The Employer is also part of the Knight-Ridder chain of newspapers and maintains an editorial department that is independent from the Detroit News. The DNA is responsible for the printing and distribution of both newspapers.

The Employer contends that the individuals or positions at issue have the authority to effectively recommend the hire, transfer, reward and discipline of employees, and that they use independent judgment in responsibly directing and assigning employees. The record contains

² The Employer changed the title of this position to “Yak’s Corner Editor” after the petition was filed.

³ In its brief, the Employer stated that it no longer seeks to exclude Assistant Nation/World Editors Carol Cain, Doug Delp and Dennis Rosenblum. Accordingly, their supervisory status is not at issue.

⁴ After the removal of the disputed employees from the bargaining unit, the Employer changed their mode of compensation from hourly to salary. Both their removal and mode of compensation are the subject of pending unfair labor practice charges and consequently are not given significant weight in the instant determination.

⁵ On Saturday, the Employer produces the News, Business and Sports sections while the Detroit News produces the Features section of the combined newspaper. On Sunday, the Detroit News produces the News, Business and Sports sections and the Employer produces the Entertainment and Features sections of the combined newspaper.

no evidence, nor does it appear that the Employer contends, that the disputed individuals or positions have the independent authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward, discipline, or adjust the grievances of other employees.

The Metro Department

The Employer seeks to exclude eight assistant metro editor (“AME”) positions from the bargaining unit.⁶ At the close of the hearing, these positions were occupied by Valeria Basheda, Jim Finkelstein, Tom Krisher, Rod Hicks, Laura Wisniewski, Debra Adams and Jennifer Juarez Robles.

The metro department is the largest department at the Employer and is responsible for reporting all local and state news other than sports, business and features. The department staff consists of about 60 individuals who are located in offices in Detroit, Michigan, Royal Oak, Michigan (Oakland County Bureau), Livonia, Michigan (Wayne County Bureau), and Mt. Clemens, Michigan (Macomb County Bureau). Generally, the department operates six days a week from about 8:00 a.m. to 1:00 a.m. the next day.

The metro department is headed by Metro Editor Mike Lupo. Lupo reports to the Deputy Managing Editor for News Addie Rimmer. Directly below Lupo are Deputy Metro Editor for Assignments, also known as the “Business slot”, Bob Campbell, and Deputy Metro Editor for the Oakland Bureau Lisa Bainbridge.⁷ Campbell is located in Detroit and Bainbridge works in the Royal Oak office. The AMEs report directly to the deputy metro editors. Two AMEs, Tom Krisher and Jennifer Juarez Robles, work in the Oakland Bureau and oversee six and five reporters, respectively. Krisher and Robles report directly to Bainbridge. The AME for Western Wayne County Bureau, who is Cindy Burton, oversees six reporters. Laura Wisniewski is the AME for the Macomb County Bureau and oversees seven reporters. Valerie Basheda is located in Detroit and is the AME responsible for the Lansing Bureau and the (Detroit) City-County Building Bureau. She oversees seven reporters. Jim Finkelstein occupies the “Night slot” AME position in Detroit. There is also another AME that works nights in the downtown Detroit office. This position was formerly held by Dennis Rosenblum.⁸ The two Night AMEs each oversee four reporters. Finally, Debra Adams is the AME for “issues and topics” and oversees seven reporters. There is also an AME who serves as the “Sunday slot”, and runs the department on Sundays. Burton formerly served in this

⁶ At the close of the hearing, the Employer had one open AME position.

⁷ Lupo, Campbell and Bainbridge are stipulated statutory supervisors.

⁸ During the instant proceeding, Rosenblum was transferred to the position of assistant nation/world editor. As noted above, the Employer no longer wishes to exclude Rosenblum from the bargaining unit.

position and was relieved by Rosenblum at 3:00 p.m. While Burton held the Sunday slot six to seven reporters worked on Sundays and it was up to the reporters to determine how to use their time unless there was a breaking story.

All day-shift AMEs attend a daily 10:00 a.m. intradepartmental meeting, either in person or by phone, along with Lupo, Campbell and Bainbridge. Campbell runs the meeting at which AMEs offer stories for the next day's newspaper. The meeting is also used to prepare for a daily 10:30 a.m. interdepartmental meeting at which the various departments offer stories for the next day's newspaper. The 10:30 a.m. meeting is attended by Lupo, Campbell and Bainbridge, or Krisher.⁹ The record is silent as to how often Krisher attends this meeting. All AMEs assist in preparing the "daily news budget", which is a listing of one paragraph summaries of what news stories each department is offering for the next day's newspaper. The Oakland Bureau has a separate news budget.

The process of how a story is created, edited and appears content-wise in the newspaper is a collaborative effort between the assistant editor and reporter.¹⁰ Initially, the decision to write a story begins with an idea from the reporter and/or assistant editor. Reporters are encouraged and expected to come up with their own stories. The assistant editor then engages in "front-end editing" of a reporter's story, whereby an assistant editor sets objectives for the story and discusses with the reporter issues such as the important facts to be included in the story and who should be interviewed. The reporter then submits an electronic copy of the story to the assistant editor who edits the story¹¹ for content or substance as opposed to grammar or spelling errors. For example, assistant editors look for quality, substance, style, factual errors, fairness and potential legal issues when editing a reporter's story. AMEs spend about 2.5 hours per day editing copy. If errors are found, an assistant editor has the authority to have the reporter rewrite the story, or if timing is an issue, the assistant editor might rewrite the story. The assistant editor also has the authority to "kill" a story so that it is not published in the newspaper, and while the decision to "kill" a story can be overruled by a higher authority, that rarely occurs. If the story is approved by the assistant editor, the story is then sent to the copy department to be edited. The copy editing process is discussed in detail below.

AMEs have the authority to assign stories to reporters. Former AME Cindy Burton, as the Sunday slot, once had to call reporters who were normally supervised by other AMEs at

⁹ There is also a 2:30 p.m. interdepartmental meeting held daily, mainly to select what will appear on the front page of the newspaper the next day. The metro department is represented by Lupo, Campbell and Bainbridge, or Krisher. The record is silent as to how often Krisher attends this meeting. Lupo testified that Jennifer Juarez Robles attends this meeting occasionally.

¹⁰ This process appears to be used in all substantive news departments.

¹¹ A story is also referred to as "copy".

their homes and have them cover a big summer storm. Also, at the morning intradepartment meeting, Burton might volunteer one of her reporters who was not busy for a bigger assignment and then assign that story to the reporter. AMEs supposedly have the authority to pull reporters off of stories, which was a major complaint by reporters. However, there were no specific examples of this authority having been exercised. Further, AMEs sometime transfer reporters to another “pod” or group of reporters overseen by another AME, although this seems to occur only when another AME is short of reporters. The Employer contends AMEs are involved in changing reporters’ beats,¹² but Metro Editor Lupo testified that he alone has absolute authority to change a reporter’s beat. Furthermore, Lupo’s “bosses” would probably want to review any changes.

The ultimate authority to hire in the metro department lies with Managing Editor Carol Leigh Hutton and Executive Editor Bob McGruder. The metro editor provides the assistant to Recruiting and Development Editor Joe Grimm a list of applicants he wishes to be scheduled for interviews. Candidates for openings come from recruiting efforts by the metro editor, deputy editors and AMEs, referrals, internal job postings, previously-used freelancers, job fairs, advertisements and unsolicited applications. During the interview process, applicants meet with about 20 or more individuals from the Employer over the span of two days. AMEs interview applicants and give the metro editor written input regarding the applicants. Reporters also meet with applicants and provide their input, sometimes in writing, to the metro editor. The metro editor takes feedback from AMEs and reporters and uses it to make recommendations regarding applicants to the deputy managing editor, managing editor and executive editor.¹³ According to Lupo, the recommendation of an AME plays an important role in the hiring process, apparently to assure that an AME would want to work with the candidate. The Employer provided several examples of e-mails sent by former and current AMEs containing their opinions of various applicants, some of whom were hired and some that were not.

In the metro department, employees are given 90-day probationary evaluations that are used to determine if they will remain employed by the Employer. Also, employees have annual evaluations which are used to set goals for the employees. AMEs provide written evaluations for the reporters in their pod and give the evaluations to the metro editor, who then makes modifications. The metro editor then passes the evaluation along a chain of higher management that normally includes the recruiting and development editor, deputy managing editor, managing editor and executive editor, all of whom can modify the evaluation. The evaluation is signed by all who review it, including the AME. Typically, the metro editor or deputy metro editor and an AME will present the evaluation to the reporter.¹⁴

¹² A “beat” was defined as an area of geography or affinity that a reporter is responsible to cover.

¹³ The record indicates that a similar hiring process as described here is used in all the departments discussed below.

¹⁴ It appears from the entire record that a similar evaluation process as described here is used in all departments discussed below.

Lupo assertedly relies on about 90 to 95 percent of the AME's draft and he might add only one goal to the evaluation. According to the Employer, evaluations are used for potential discipline and to transfer employees. Based on an evaluation by AME Burton of a reporter, because the reporter was not meeting his goals, Burton recommended to the metro editor that the reporter be transferred to another beat where he might be more successful. The reporter was subsequently transferred from the Western Wayne Bureau to the Detroit office. In addition, AME Basheda initially prepared an evaluation in which a reporter was warned that failure to improve in an area would result in negative consequences, including disciplinary action. According to Lupo, an evaluation is the "starting point" in determining whether an employee receives merit pay. However, Lupo was unsure as to how merit pay is determined and exactly who makes the final decision regarding merit pay. There was no evidence that AMEs make specific recommendations regarding merit pay.

The metro editor ultimately has the authority to approve overtime. However, there have been occasions where AMEs approved a reporter's overtime before sending an overtime request to the metro editor for approval. The record is unclear as to how often this occurs. The night slot and night AME apparently frequently approve overtime without consulting the metro editor, although there were no specific instances cited. AMEs also have the authority to approve the work schedules and vacation of the reporters in their pod since it is their responsibility to make sure that they have enough reporters for coverage. There was testimony that AME O'Gorman made a "big deal" about getting the starting times of the education reporters changed, but it is apparent that someone else approved the actual change. Indeed, the ultimate authority in approving work schedules and vacations lies with the metro editor.

Section 2(11) of the Act defines a "supervisor" as:

... any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

An individual need possess only one of the enumerated indicia of authority in order to be encompassed by the definition, as long as the exercise of such authority is done in the interest of the employer and requires the use of independent judgment. ***Big Rivers Electric Corp.***, 266 NLRB 380, 382 (1983). The Board has a duty not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee

rights that are protected under the Act. *St. Francis Medical Center-West*, 323 NLRB 1046, 1047 (1997); *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). The legislative history of Section 2(11) indicates that Congress intended to distinguish between employees commonly referred to as “straw bosses” or leaders, who may give minor orders and oversee the work of others, but who are not necessarily perceived as part of management, from those supervisors truly vested with genuine management prerogatives. *George C. Foss Co.*, 270 NLRB 232, 234 (1984). The exercise of some supervisory authority in a merely clerical, perfunctory or sporadic manner does not require a finding that an employee is a supervisor within the meaning of the Act. *Somerset Welding & Steel*, 291 NLRB 913 (1988). The burden of establishing supervisory status rests on the party asserting that status. *Bennett Industries*, 313 NLRB 1363 (1994).

It is well settled that mere editing does not make a newspaper editor a supervisor under Section 2(11) of the Act. *Scranton Tribune*, 294 NLRB 692 (1989); *Kenosha News Publishing Corp.*, 264 NLRB 270 (1982); *Suburban Newspaper Publications, Inc.*, 226 NLRB 154, 156 (1976). An editor’s authority to check, correct, rewrite, or even kill stories and to determine the content and layout of part of the paper does not compel a supervisory finding. Such duties merely require the exercise of “news judgment” within the editor’s professional journalistic expertise as opposed to any supervisory or managerial authority. *Scranton Tribune*, supra; *Washington Post Co.*, 254 NLRB 168, 205, 208-210 (1981); *Bakersfield Californian*, 316 NLRB 1211, 1219 (1995).

The record is insufficient to find that AMEs use independent judgment in assigning work and directing employees. The AMEs authority to assign work and direct employees appears to be routine and based on professional news judgment. It is clear that the assigning of stories is mainly a collaborative process between the reporter and assistant editor. Thus, little independent judgment is used by the AME. Any direction of a reporter’s work by an AME appears to be more akin to that given by a leadman than that of a supervisor. *Suburban Newspaper Publications*, supra. Although AMEs transfer reporters to other pods, this appears to be sporadic and occurs only when another AME is short-staffed.

While AMEs prepare initial drafts of evaluations, they are approved, and can be modified, by five high-ranking supervisors before they are presented to the employees. This collective process militates against finding that the AMEs effectively evaluate employees. The AME’s role in the evaluation process appears to consist of keeping track of the stories a reporter has written and to note the strengths and weaknesses of the reporter. Other than to set goals, it is not clear the impact, if any, the evaluation has on the status or tenure of an employee. It is well settled that participation in evaluations which do not alone affect job status or tenure does not demonstrate supervisory authority. *Hausner Hard-Chrome of KY, Inc.*, 326 NLRB No. 36 (Aug. 27, 1998); *Ohio Masonic Home*, 295 NLRB 390 (1989). The authority to simply evaluate employees without more is insufficient to establish supervisory status. *Ohio Masonic Home*, supra; *Passavant Health Center*, 284 NLRB 887 (1987).

Although former AME Burton recommended the transfer of a reporter based on an evaluation, and the reporter was subsequently transferred, it is clear that the metro editor has the ultimate authority to change a reporter's beat, and even his superiors may review his decision. Moreover, this rare instance of an AME effecting an employee's transfer is not sufficient to bestow supervisory status. AME Basheda's threat of disciplinary action in a reporter's evaluation appears to be uncommon and is insufficient to establish supervisory authority for all eight AMEs. There is no evidence that any AME, or any of the disputed individuals, was involved in the actual discipline of any employee. Thus, the AMEs' participation in evaluations does not compel a finding of supervisory status. *Ohio Masonic Home*, supra.

While AMEs interview candidates and provide feedback to the metro editor, the ultimate authority to hire lies with the managing editor and executive editor. Also, the metro editor determines who will be interviewed, and 20 or more individuals, including reporters, interview candidates and provide feedback. It appears the AMEs' principal role in the hiring process is one of self-interest to assure that the candidate is suitable as a working companion. *Kenosha News Publishing Corp.*, supra at 271. Thus, the AMEs' participation in the hiring process is not enough to confer supervisory status. See also *Washington Post*, supra at 208.

In addition, it does not appear that the Sunday slot, despite being in charge of the department that day, uses independent judgment in directing employees. Indeed, reporters on Sundays determine how to use their time unless there is a breaking story. Therefore, the record is insufficient to establish that the Sunday slot AME exercises supervisory authority. *St. Francis Medical Center-West*, supra; *Sears, Roebuck & Co.*, 292 NLRB 753, 756 (1989). The absence of other supervision during the Sunday slot is a secondary indicia, but standing alone is insufficient to establish supervisory status. *Billows Electric Supply*, 311 NLRB 878 (1993).

That AMEs, as well as the other disputed individuals, are salaried and can set their own work schedules does not warrant a finding of supervisory status. *J.C. Brock Corp.*, 314 NLRB 157, 159 (1994). Moreover, the supervisory to nonsupervisory ratio would be quite high if AMEs were found to be supervisors.

Based on the above, I find that there is insufficient evidence in the record to establish that AMEs are supervisors under the Act and, therefore, the AMEs should not be excluded from the unit. *Washington Post Co.*, supra, 254 NLRB 168; *Bakersfield Californian*, supra, 316 NLRB 1211.

The Business Department

The Employer seeks to exclude three assistant business editors (“ABE”) from the bargaining unit. At the close of the hearing, these positions were occupied by Cindy Burton, Kim Norris and Tara Ransom.

The business department reports business and financial news. The department also produces a weekly section on automotive news called the “STOP” and a personal finance section called “The Money Report”. The department employs about 20 individuals, all of whom except one work in the Employer’s downtown Detroit office.¹⁵ The department generally operates five days per week, Monday through Friday, from about 10:00 a.m. to 6:30 p.m.

Business Editor Mike Sante supervises the business department.¹⁶ The business editor reports directly to the deputy managing editor for News. Sante previously served as an ABE from January 1993 to April 1, 1998, when he became the business editor. The ABEs, as well as a columnist, report directly to Sante. ABE Tara Ransom, who was hired as an ABE on May 4, 1998, is responsible for The Money Report and oversees four or five reporters. ABE Kim Norris is responsible for the stock section and she oversees four reporters. There is also an ABE, Cindy Burton, who serves as the business or day slot.¹⁷ The business slot is responsible for organizing the daily business section, preparing the news budget for the department, reviewing news wires and overseeing five reporters. Burton also attends the 10:30 a.m. interdepartmental meeting described above on behalf of the business department.

Similar to other assistant editors, ABEs collaborate with reporters in creating a story. ABEs edit reporters’ stories for content and have the authority to have reporters rewrite stories. In one instance, Ransom sent a story regarding ATM machines back to a reporter to rewrite because the story failed to answer questions Ransom thought were pertinent. The Employer contends that ABEs also have the authority to kill a story. However the only evidence regarding this authority was provided by Ransom, who vaguely testified about how she held a story for a day or two. ABEs also spend about an hour and a half per day pulling wire copy stories from outside news services such as the Associated Press. The business editor and ABEs monitor these news services for breaking news. The ABE may pull a story and edit or rewrite it for inclusion in the newspaper.

ABEs also provide input to employee evaluations. The evaluation process used in the business department is similar to the one used in the metro department described above. The

¹⁵ Jenna Fix is a reporter in the business department that works in the Knight-Ridder Washington Bureau. Fix reports to the business slot and to a Knight-Ridder editor located in Washington, D.C.

¹⁶ Sante is excluded from the bargaining unit and his supervisory status is not at issue.

¹⁷ The business slot was open until filled by Cindy Burton in early January 1999. While the position was open, Sante acted as the business slot.

business editor or ABE drafts the initial evaluation and then they collectively modify the evaluation before it is sent to higher management for approval. This evaluation process has been used since Sante became business editor in April 1998. Prior to that time, the business editor mainly prepared the evaluations himself. The Employer presented three examples of evaluations in the department that occurred in 1998. Two of the evaluations were sent from the business editor and ABE to the managing editor and executive editor and, at the time of the hearing, the other was being processed and was to be signed by the ABEs. ABEs also receive evaluations and the business editor takes into account input from reporters during the ABEs' evaluations.

ABEs also provide input during the hiring process which is similar to the process described above that is used in the metro department. During the interviewing process, applicants come from a variety of sources. The business editor decides who will be interviewed and the applicants meet with about 15 to 20 individuals, including the executive editor, managing editor, business editor, ABEs and reporters. ABEs interview applicants and make recommendations as to whether an applicant should be hired. Reporters also provide written feedback to the ABE regarding applicants they meet. In one instance, Sante and two ABEs objected to the hiring of an individual who was interviewed for the then-open business slot, and although the executive editor and managing editor showed interest in hiring the individual, he was not hired. Some reporters had expressed the same concerns regarding this individual. While Sante was an ABE, he recruited a reporter, recommended that the individual be hired, and ultimately the reporter was hired. During this process, Sante also sought input from other reporters regarding who they thought should be hired.

The business editor prepares the work schedule, which is fairly consistent. However, ABEs adjust work schedules if necessary due to breaking news or the unexpected need for coverage. The business editor also approves vacation and overtime, but mostly after the reporter has already worked the overtime. Reporters have to turn in overtime slips that are signed by the business editor, but not the ABEs. According to Sante, the preferred policy is that reporters should report to the ABE if they have to work overtime and the ABE has the authority to approve or deny the overtime. However, the record is void of any evidence that this preferred policy has been followed. Indeed, overtime has been paid when a reporter has worked overtime without prior approval.

Based on the foregoing, there is insufficient evidence that ABEs possess any statutory indicia of a supervisor. As with the AMEs, it does not appear that the ABEs use independent judgment in assigning or directing employees, but rather they use professional news judgment in helping reporters come up with story ideas and in editing stories. *Scranton Tribune*, supra. Thus, it appears that the nature of the relationship between an ABE and reporter is not supervisory but that of a working leadperson. *Washington Post*, supra at 205.

Further, as explained above, the ABE's role in the Employer's collective hiring and

evaluation processes does not warrant a finding of supervisory status. Although the Employer asserts that as an ABE, Sante was heavily involved in the hiring of a reporter, again it is clear that the hiring process involves numerous individuals, including reporters, and the ultimate decision rests with upper management. See, e.g., *Washington Post*, supra at 208. Although ABEs recently have been chosen to provide input to evaluations, the record is unclear as to the impact, if any, the evaluation has on the status or tenure of the employee. An evaluation seems to list an employee's accomplishments and goals with no apparent consequences if the employee meets or fails to meet the listed goals. Thus, the ABE's participation in evaluations is not enough to warrant a finding of supervisory status. *Ohio Masonic Home*, supra.

Further, while the business slot ABE clearly has more authority than the other ABEs in terms of producing the business section, it does not appear she has any more authority regarding personnel decisions. The business editor prepares the work schedules, and approves vacation and overtime. Accordingly, based on the above, I find that the ABEs should not be excluded from the unit. *Washington Post Co.*, supra; *Bakersfield Californian*, supra.

The Sports Department

The Employer seeks to exclude two assistant sports editors ("ASE") and a prep sports coordinator ("PSC") from the bargaining unit. The sports department staff consists of about 47 individuals, including 2 columnists, 15 reporters, 20 copy editors¹⁸ and 4 agate editors.¹⁹ The department operates six days a week, Monday through Saturday, but there are no normal hours of operations since reporters cover sporting events as they occur. The office is staffed from about 7:30 a.m. to 1:30 p.m. The sports department is headed by Sports Editor Gene Myers and Owen Davis serves as the deputy sports editor.²⁰ Davis is the "second in charge" and works from about 10:30 a.m. to 9:00 p.m. Davis also serves as the day one editor, which position consists of talking to reporters throughout the day and doing the first read on many stories. Below the deputy sports editor are the two ASEs and the PSC.

Assistant Sports Editor/Production

Tom Panzenhagen is the ASE for production. He arrives at work at about noon and performs various duties to "make the paper better." He is responsible for the daily production of the sports section. In this role, Panzenhagen prepares the news budgets and makes sure there is enough space in the newspaper to accommodate the stories being produced and that there are enough copy editors to handle the workload. Panzenhagen also coordinates with the

¹⁸ Copy editors in the sports department read over copy, talk to reporters about copy, write headlines and some also "design", which includes placing photos and stories on pages.

¹⁹ Agate editors compile box scores, team standings, horse racing results, and other sporting events results.

²⁰ Myers and Davis are excluded from the bargaining unit and their supervisory status is not at issue.

graphics and photography departments to obtain graphics and photographs for the section. The Employer contends that Panzenhagen has the authority to assign work to photographers. However, the sports section is assigned two photographers and Panzenhagen will normally talk to the photo editor if photos are needed for a story. Panzenhagen also works closely with the “page one” and “page two” editors,²¹ who are responsible for the design of the first and second pages of the section, respectively. These two positions are occupied by a rotation of copy editors. Panzenhagen spends about 10 percent of his day editing copy.

The Employer contends that Panzenhagen has the authority to assign work to copy editors and reporters. However, some editors are “expert” in certain sports, and thus Panzenhagen will assign them to edit stories dealing with those sports. Panzenhagen assigns work to reporters, “[o]ccasionally, but not very often ... that’s more of what Owen [Davis] and Gene [Myers] do best.” Indeed, Panzenhagen might only assign work to a reporter on Sunday when he normally is the ranking sports editor in the department. On Sunday, Panzenhagen prepares the news budget and attends interdepartmental meetings. He also works with reporters on developing stories and he front-edits stories. A recent example of this process occurred when Panzenhagen worked with a reporter on a sensitive story dealing with two University of Michigan football players. However, Panzenhagen consulted with Myers, who was home at the time, and the Employer’s attorney on the story.

Panzenhagen also interviews applicants and makes recommendations to hire. Recently, he and ASE Schrader took an applicant, Jamael Hill, out to lunch and they both recommended that she be hired. Hill was eventually hired as a reporter to cover Michigan State University. However, the record is unclear as to who was ultimately responsible for hiring this person and how much weight was given to the recommendations by the ASEs. Sports Editor Myers had been following Hill’s career throughout college and at another newspaper.

The Employer contends that Panzenhagen also prepares evaluations for employees and submits them to Myers, who then adds his own comments to the evaluations. However, in 1998 Myers prepared all the evaluations in the department. In the past, Myers had asked Panzenhagen to prepare evaluations for roughly 10 employees that Myers wanted to help do a better job, but the record contains no details regarding these evaluations. Panzenhagen and Schrader have made recommendations to Meyers as to which copy and agate editors should receive merit pay, but the record is silent as to how many editors actually received merit pay and the impact of Panzenhagen’s and Schrader’s recommendations.

Panzenhagen also schedules copy editors, but has the sports editor review the schedule before it is posted. The Employer provided two instances where Panzenhagen had to call in employees who were not scheduled to work to fill in for employees who were sick. However, Panzenhagen normally does not call someone in on his or her day off without first clearing it

²¹ These two positions were also referred to as the “slot one” and “slot two” designers, respectively.

with the sports editor. Panzenhagen also approves copy editors' vacation and overtime, although no specific examples of this authority were provided.

Based on the foregoing, the record is insufficient to find that Panzenhagen is a supervisor. Panzenhagen's assignment of work to reporters and copy editors is clearly routine in nature. As for assigning work to editors, there is little need to use independent judgment in making assignments to experts in particular sports. Also, Panzenhagen does not directly oversee any reporters and he rarely assigns work to reporters since that is a function that the sports editor and deputy sports editor perform. Although Panzenhagen has called in employees on their days off, he normally would clear it with the sports editor. Also, while Panzenhagen prepares work schedules, he has the sports editor review them.

The record is insufficient to find that Panzenhagen effectively recommends hire or merit pay. Also, as for Hill, apparently the sports editor was involved in her hiring, since he had followed Hill's career for "quite a while."

Further, there is insufficient evidence to find that Panzenhagen effectively evaluates employees. Indeed, in 1998 Myers performed all of the evaluations. *Chevron U.S.A., Inc.*, 309 NLRB 59, 61 (1991); *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

Finally, although Panzenhagen apparently heads the department on Sundays, the record is insufficient to establish he exercises supervisory authority that day. *St. Francis Medical Center-West*, supra at 1047. Indeed, in the one instance where Panzenhagen directed a reporter on a Sunday, he consulted the sports editor. Therefore, based on the above, I find that Panzenhagen should not be excluded from the unit. *Washington Post Co.*, supra; *Bakersfield Californian*, supra.

Assistant Sports Editor/Days

Steve Schrader serves as the ASE for days. He works from about 1:00 p.m. to 9:00 p.m. Schrader is "more of an assistant" to the deputy sports editor. He oversees outdoor writer, Eric Sharp who works from his home in Grayling, Michigan, which is about three hours from the sports department in Detroit. Schrader also works closely with the two hockey writers and the Detroit Lions' (football) writer. Schrader spends about 25-30 percent of his time editing copy, and about an hour a day monitoring the wire services looking for newsworthy stories. Schrader fills in for the deputy sports editor when he is out of the office.

Schrader works with reporters to create story ideas, he edits copy and has the authority to have reporters rewrite stories. However, the deputy sports editor is the main editor for writers. There is an outdoor page that runs every Thursday and Schrader works closely with the outdoor writer in preparing this page. Schrader sometimes works with the photography department or a wire service to get photos for Sharp's story if Sharp is unable to take pictures

himself. In one instance, Schrader suggested killing a story in opposition to the deputy sports editor and the story was not published. Schrader also assigned a breaking story to a hockey writer who was at the time at a hockey game during his non-work hours.

Schrader interviews candidates, as do other ASEs, and provides input on hiring decisions, including, as mentioned above, his recent recommendation to the sports editor that Jamael Hill be hired. There is, however, no indication as to the weight of Schrader's recommendation. Schrader prepares evaluations for employees, which are processed in the same manner as discussed previously in the other departments. The two evaluations offered were for Eric Sharp, and Schrader was present when Sharp was given the evaluations. As discussed above, Schrader testified that he recommended to the sports editor that certain employees receive merit pay, but there is no indication in the record as to the impact of his recommendations.

Schrader does not schedule employees for work but he can authorize overtime. If reporters have to stay late for a sporting event, it is routine that they will work overtime and that it will be approved. Schrader sets his own work schedule.

There is insufficient evidence to support a finding that Schrader is a supervisor under the Act. Schrader's work with the outdoor writer is hardly evidence of supervisory status. The outdoor writer, who works three hours away from the department, appears to work mainly autonomously. Any editorial duties Schrader performs, which do not appear to many, are based on his professional news judgment. As explained above, these duties do not confer supervisory authority. Further, the deputy sports editor is the main editor and appears to be heavily involved in the day-to-day dealings with reporters and editors.

As with Panzenhagen, there is insufficient evidence that Schrader effectively recommends hire or merit pay, or effectively evaluates employees. Again, the impact of Schrader's recommendations is unclear and, as already noted, the evaluations seem to have no impact on the status or tenure of an employee. Regarding merit pay, the record does not reveal the specifics of Schrader's recommendations or which editors received merit pay. In addition, numerous individuals interview candidates so it is unclear the effect that Schrader's recommendation had in the decision to hire Hill. Further, it is well established that an employee who substitutes for a supervisor may be deemed a supervisor only if that individual's exercise of supervisory authority is both regular and substantial. *Hexacomb Corp.*, 313 NLRB 983, 984 (1994). The record is insufficient to establish that Schrader exercises supervisory authority during his temporary substitution for the deputy sports editor. Therefore, the ASE for days should remain in the unit.

Prep Sports Coordinator

Shelly Solon took over as PSC in August 1997. As PSC, Solon coordinates coverage for high school sports and is responsible for the “Preps Extra” section, which is published every Thursday. The “coordinator” position is defined in the parties’ collective bargaining agreement.²² Solon oversees two reporters, one of whom has been employed by the Employer for over 20 years. She “indirectly” oversees an agate editor, George Sipple, who normally works for preps two days a week.²³ The record is unclear as to the extent of Sipple’s duties, which includes some writing, and work in the office. Solon is also responsible for the “prep crew” which is a group of about 15 to 20 freelancers, who are not employees of the Employer.²⁴ The prep crew mainly takes telephone calls from coaches to obtain scores and other information about games. There are two or three that write stories on the games. Individuals in the prep crew work anywhere from “once in a while” to once or twice a week. Solon is normally not present when the prep crew works on Tuesday nights, but is there on Friday nights. It appears that Solon runs the prep crew mostly independently of the sports editor and deputy sports editor.

Solon has the authority to hire freelancers for the prep crew, but not full-time employees. The wage paid to freelancers, which was not set by Solon, is \$8.33 per hour.²⁵ She also has the authority to fire freelancers on the prep crew. Solon fired one freelancer who was stealing food from the refrigerator. However, she consulted with Myers before making the decision to fire the individual. Solon also assigns work to the prep crew and edits their copy, although as mentioned above, the prep crew is mainly responsible for handling the phones and there are only two or three who write stories. Solon works with the reporters in determining their schedules and she schedules the prep crew. Myers is responsible for the reporters’ vacation and comp time.

The Employer asserts that the PSC has the authority to assign work to employees. The reporters generally have specific sports that they cover. Solon works with the two reporters in co-determining coverage for games, but if there is a disagreement she will ultimately decide who will cover which game. Solon also edits the reporters’ copy and has the authority to have the reporter rewrite a story. Solon recently sent a story back to a reporter to rewrite because the story had a lot of unanswered questions. Solon has the authority to kill a story, however,

²² The CBA states, in pertinent part:

Under such direction, an employee performing as Coordinator is expected to routinely assign work to, monitor work of, instruct, train or assist other employees in their day-to-day work assignments, and continue to perform the same bargaining unit work as those other employees in his/her work group.

²³ ASE Panzenhagen does Sipple’s schedule.

²⁴ Freelancers are akin to independent contractors.

²⁵ Solon did not know how long this rate had been in effect or who set it.

this normally occurs only when there is not enough space in the paper for a particular story.

According to the Employer, Solon interviewed a potential candidate for a prep writer position, but the position was never filled. Myers also discussed the prep position with Solon. Solon did not meet with reporter Jamael Hill prior to Hill's hiring. Solon ostensibly has the authority to evaluate employees, although last year she gave only verbal input to Myers who, as stated earlier, did all the evaluations in the department. This year, she will be preparing the evaluations for the two reporters and the agate editor. The prior PSC participated in evaluating employees in a similar manner that assistant editors in other departments have, as described above. Solon also receives evaluations.

The record demonstrates that Solon belongs in the unit. Solon is mainly responsible for the prep crew, which is staffed with non-employees. It is well settled that the selection of freelancers or stringers, and their payment within limited funds, does not require a finding of supervisory status. *Washington Post*, supra at 202. Thus, Solon's authority over the prep crew does not warrant a finding of supervisory status.

In addition, Solon's relationship with the two reporters appears to be informal and cooperative and not supervisory. *Suburban Newspaper Publications*, supra at 157. Although Solon can ultimately decide which reporter will cover a game, this appears to occur infrequently considering she works with the reporters in determining coverage for games and the reporters generally have specific sports they cover. For reasons stated above, Solon's editorial duties do not warrant a finding of supervisory authority.

Further, there is no supporting evidence that Solon recommends hire. Moreover, there is insufficient evidence that Solon effectively evaluates employees. She only provided oral input to Myers last year and although she is to prepare evaluations in the near future, it is unclear the impact the evaluations have on the terms or conditions of employment of an employee. Therefore, I find that the PSC should not be excluded from the unit.

The Features Department

The Employer seeks to exclude four assistant features editors ("AFE") from the bargaining unit: Steve Byrne, Steve Grimmer, Kathy O'Gorman and Marta Salij. The features department is responsible for producing six daily sections and various weekly specialty sections for the newspaper. The department staff consists of about 30 individuals. Assistant Managing Editor for Features Dale Parry heads the department. Below Parry are the Features Editors, Syndicates Editor John Smyntek, "The Way We Live" Editor Tina Croley and the "Voices" Editor Sharon Wilmore.²⁶ The AFEs directly report to one of the features editors.

²⁶ The position of entertainment editor, a features editor, was vacant at the time of the hearing. Parry, Smyntek, Croley and Wilmore are excluded from the bargaining unit and their supervisory status is not at issue.

Marta Salij is responsible for sections dealing with real estate, books and home computers. She reports directly to Features Editor Tina Croley. Salij oversees five reporters, one research assistant and a columnist. She works from about 9:30 a.m. to 7:00 p.m., Monday through Friday. Kathy O’Gorman has been an AFE since about early 1998. She is responsible for the weekly food and travel sections and she oversees three reporters and the “test kitchen” director, who tests all of the recipes printed in the food section. O’Gorman reports directly to the assistant managing editor and features editor Sharon Wilmore. Steve Grimmer is the AFE responsible for a weekly health and fitness section called “Body and Mind” and oversees two reporters and one columnist.

AFE Steve Byrne is responsible for the daily entertainment coverage and the “Weekend” section, which is a 16-page section that appears every Friday and covers various entertainment events occurring that weekend. He oversees four reporters and an intern. In regards to the Weekend section, Byrne works with entertainment writers who contribute to the section, some of whom report to other editors, conducts weekly planning meetings and coordinates with copy editors, designers and photographers. Byrne also has the authority to contract with freelance writers and frequently uses three freelancers for music and nightclub reviews. Byrne pays the freelancers set rates, which apparently were approved by the assistant managing editor.

The Employer asserts that the AFEs have the authority to assign work, direct the work of employees, edit copy, have work redone, and kill a story. Byrne can assign work to his reporters and has in the past, but sometimes it is a collaborative process where the reporter pitches him stories. For example, Byrne recently told a reporter that a story should be done about George Clooney’s last show on “ER”. As an example of killing a story, in the fall of 1998 Byrne killed a story because he was worried about its accuracy. In regard to having a reporter redo a story, Byrne recently had a reporter redo a story because it lacked different perspectives. The Employer presented numerous e-mails from AFE Salij to various reporters where she directed or assigned them stories and edited their copy. AFE O’Gorman recently assigned additional follow-up stories to a reporter.

The record reveals that AFEs make recommendations to hire. The interview process is the same as in the other departments described above. With respect to a new AFE that was recently hired, Byrne interviewed her and recommended to the assistant managing editor that she be hired. AFE Salij interviewed applicants for a real estate reporter opening and recommended that Ebony Johnson be hired for the position. Johnson, who had been a research assistant, was hired as the real estate reporter in January 1998. AFE Grimmer interviewed and recommended that a general assignment reporter be hired, and ultimately she was hired. However, the record is silent as to the impact of their recommendations.

AFEs also provide input on employee evaluations apparently in the same manner as assistant editors do in the other departments as described above. The Employer provided several examples of evaluations that AFE Byrne initially drafted and signed, which then went through upper management and then were presented to the reporters, with Byrne present. These evaluations were done between 1995 and 1998. The Employer also provided an evaluation done in September 1998 that AFE O’Gorman initially drafted and signed.²⁷ The Employer also offered evaluations from 1997 that AFE Grimmer initially drafted and signed.

Byrne approves vacation for his reporters by consulting the department vacation schedule. Overtime is not worked often but when it is the assistant managing editor approves it rather than the AFEs. Although Salij assertedly schedules her reporters and approves their vacation and overtime, no examples of this authority were provided. Furthermore, the department does not have a lot of overtime. O’Gorman does not schedule her reporters, but approves vacation and overtime. Again, the record contains no examples of this authority.

AFEs spend about 50 percent of their time editing copy and “coaching” reporters, and the remaining time is spent on planning and producing their sections. Salij spends about 20 percent of her time reading copy. AFEs generally do not write stories, with only O’Gorman occasionally writing stories. AFEs alternate in representing the department at the 10:30 a.m. interdepartmental meeting. AFEs are generally in the office from about 10:00 a.m. to 7:00 p.m., but they determine their own schedules.

AFEs do not possess such authority to find them Section 2(11) supervisors. AFEs spend about 50 percent of their time performing editorial duties, which, as stated above, does not confer supervisory authority upon them since they use their professional news judgment in performing such activities. In this respect, an AFE’s direction of reporters is more akin to an experienced newspaper person than that of a supervisor. *Washington Post*, supra at 207; *Suburban Newspaper Publications*, supra at 156. Although it is clear that AFEs participate in the evaluations of employees, again it is unclear what impact their opinions have on the evaluations considering the numerous managers that are involved in the process. Moreover, as stated above, it is unclear the effect an evaluation has on the status and tenure of an employee. Further, for reasons already stated in dealing with other disputed positions, the AFE’s role in the Employer’s collective hiring process does not warrant finding of supervisory status.

Finally, it is unclear the authority an AFE exercises in determining work schedules and approving overtime and vacation. AFE Byrne testified that the assistant managing editor approves overtime, while AFEs Salij and O’Gorman said they approve overtime for their reporters. Nonetheless, overtime is rare. In addition, Byrne refers to the department vacation schedule when scheduling the vacation of his reporters. Such scheduling by the AFEs appears

²⁷ Prior to becoming an AFE, O’Gorman served as an AME for about 8 to 10 years, and the Employer offered several evaluations of employees she drafted when she was in that position.

to be routine in nature. Further, as explained above, Byrne's authority to contract freelancers at pre-established rates does not confer supervisory authority. Accordingly, I find that the AFEs should be included in the unit.

The Design Department

The Employer seeks to exclude Deputy Design Directors Scott Albert and Bryan Erikson from the bargaining unit. The design department is responsible for the overall layout and appearance of the newspaper. The department has two divisions, news and features, and employs about 12 individuals, including Albert and Erikson. Albert is the deputy design director for the news ("deputy for news") while Erikson is the deputy design director for features ("deputy for features"). Also, since August 1998, Erikson has served as the acting design director, who heads the department.²⁸ Prior to August 1998, the design director was Mike Davis. Davis reported to the Assistant Managing Editor of Sports and Operations Dave Robinson. The department operates six days a week, Sunday through Friday, with two shifts. The individuals in the design department are located throughout the Employer's downtown Detroit office, i.e., business designers are located in the business department on the first floor and features designers are located in the features department on the second floor.

The deputy for features oversees six designers while the deputy for news oversees four designers. The deputy design directors' responsibility is to make sure designers meet deadlines and to "coach" designers in the quality of their work. A deputy assigns work based on the designer's talents. Some designers are assigned long-term projects, while others work might change weekly. The designers work with editors, writers and photographers on a daily basis to put together the layout and design of a particular section. Sometimes designers coordinate and run daily or weekly planning meetings. Designers make daily design decisions, such as determining the size of a headline, the number of stories on a page, the location of stories and photos, the size of a photo, and the color used. Deputy design directors are ultimately responsible for these types of decisions, although no specific examples of this authority were provided.

The hiring process in the design department is similar to that described in other departments. Erikson was involved in the hiring of two designers, a former part-time designer and a former intern, while a deputy design director. With respect to the former part-time designer, the assistant managing editor and design director asked him to assess the candidate because he had previously served as her immediate supervisor. Erikson believed that the candidate was ready for a full-time position and so recommended, and ultimately she was hired. In addition, Erikson and Davis determined that the former intern was also qualified, and ultimately she was hired in late fall 1996. Other designers also met with both candidates and

²⁸ The design director is excluded from the bargaining unit and the supervisory status of this position is not at issue.

recommended that they be hired. No evidence was submitted regarding Deputy Albert's role in the hiring process.

Deputy for Features Erikson provides input to employee evaluations in a similar manner as assistant editors in other departments. In about April 1998, Erikson provided written notes for two employees' evaluations to the design director, who drafted the initial evaluations. Erikson signed the evaluations and met with the employees along with the design director to discuss the evaluations. Erikson also made recommendations regarding merit pay for his designers in 1997. Erikson met with the assistant managing editor and design director to discuss who should receive merit pay and how much, but the record is silent as to the specifics regarding this process. Apparently, the assistant managing editor had the ultimate authority to decide merit pay.

In addition, Erikson can give oral discipline, but only a very vague example of such authority was provided in the record. Apparently, after a designer had caused a page to be late, Erikson brought to the designer's attention the seriousness of his mistake to let him know that he had to do better next time. There was no record evidence regarding discipline issued by Albert as Deputy for News.

Deputy for Features Erikson prepares the work schedules for designers, approves overtime and coordinates vacations. If an employee has to leave early, it would be mutually worked out with the employee. Albert also schedules vacation for the news designers. Erikson spends 20 percent or less of his time doing actual design work. Further, since the summer of 1997, Erikson has been leading a project to revamp the overall design of the newspaper. Erikson makes more than about half of the designers since he became salaried in April 1998, when he was removed from the bargaining unit.

Based on the foregoing, I conclude deputy design directors should not be excluded from the unit. First, the only probative testimony regarding Deputy for News Albert was that he assigns work in a similar manner as the deputy for features and approves vacation. The record is clearly insufficient to find the deputy for news a statutory supervisor. Also, it appears that the designers work somewhat autonomously considering they work with other departments and hold planning meetings on a daily or weekly basis. Any direction from a deputy appears to be routine at most. Indeed, some designers have long-term assignments. All other judgements made by the deputy appear to be based on design experience, rather than supervisory authority. Thus, the record does not support a finding that the deputy design directors use independent judgment in assigning work and directing employees.

In addition, Erikson's role in hiring two former employees in the Employer's collective hiring process is not enough to confer supervisory authority. For reasons already stated, the deputy's role in the evaluation process is not sufficient to warrant a finding of supervisory status. Moreover, unlike in some other departments already discussed, the design director, not

the deputy, drafts the evaluations before sending them to upper management, further evidencing the limited role of the deputy. While Erikson apparently played some role in merit pay, the record is too ambiguous regarding the impact of his recommendations to confer supervisory authority. Likewise, I find Erikson's testimony regarding an incident of oral discipline to be too vague to establish disciplinary authority. In any event, such warning seemed ineffective and, considering the entire record, very rare. That Erikson is leading a project to redo the design of the newspaper is a credit to his design experience, but there is no evidence that this project will affect the Employer's personnel policies. *Auto West Toyota*, 284 NLRB 659, 661 (1987). Further, the deputies' role in coordinating work schedules and overtime appear to be routine. Therefore, based on the above, I find that the deputy design directors are not supervisors under the Act.

Assistant Nation/World Editor

The Employer seeks to exclude Assistant Nation/World Editor ("ANWE") Peter Gavrilovich from the bargaining unit. The department is responsible for national and international news. Nation/World Editor Nancy Laughlin heads the department. Besides Gavrilovich there are three other ANWEs located in Detroit,²⁹ and two reporters who are located in Washington, D.C. in the Employer's Washington Bureau.³⁰ There are no reporters in the nation/world department located in Detroit.

Gavrilovich works from approximately 8:30 a.m. to 6:00 p.m. and is the ranking individual in the department until Laughlin arrives, which is normally about noon. He is in charge of the department in Laughlin's absence. The record is silent, however, as to how often this occurs. Gavrilovich attends the 10:30 a.m. interdepartmental meeting on behalf of the nation/world department and sometimes the 2:30 p.m. interdepartmental meeting, which is normally attended by Laughlin. Gavrilovich also attended a meeting regarding the Washington Bureau, which is normally held at least twice a year in Washington, D.C. to discuss such issues as coverage plans and beat reports.

Gavrilovich assigns editing work to the other ANWEs based on the nature of the story and their area of expertise. For example, Gavrilovich may assign ANWE Carol Cain a breaking story to continue to follow and edit after his shift ends since she does not come in at 3:00 p.m. Gavrilovich usually assigns ANWE Doug Delp the "centerpiece" story, which is normally a long story that contains several pieces of art. Regarding the difference between Gavrilovich and the other ANWEs, Gavrilovich decides the location of a story and whether a story will run, while the other ANWEs normally would not exercise such authority unless

²⁹ The Employer does not seek to exclude the three other ANWEs from the bargaining unit.

³⁰ The Washington Bureau is part of the Knight-Ridder Washington Bureau, which is run by a bureau chief and a news editor, and employs several assistant news editors and correspondents. Melanie Eversly and Janet Fix are the two Free Press reporters stationed there.

Gavrilovich was absent.

In addition, Gavrilovich assigns work to reporter Melony Eversly of the Washington Bureau, although she also reports to other editors in Washington, D.C. Gavrilovich recently assigned Eversly to cover the impeachment trial of President Clinton and to do a profile on Congressman John Conyers. Sometimes Gavrilovich also assigns work to reporters in other departments by contacting the reporter's assistant editor to make such arrangements or by directly contacting the reporter. In one instance, Gavrilovich directly asked the religion reporter to provide a feed³¹ regarding a recent trip by Pope John Paul II to Mexico and St. Louis. Gavrilovich can also engage the services of freelance reporters. Recently, he paid \$400 to a freelance reporter out of Sarajevo for a story about the relationship between Bosnian Serbs and Bosnian Muslims. However, the established rate for freelancers is between \$350.00 and \$400.00 and Gavrilovich discussed the decision to use this freelance reporter with Laughlin. Gavrilovich provides oral input to Laughlin regarding employee evaluations, which are written by Laughlin. In this process, Gavrilovich will discuss goals for particular employees in the department. The other ANWE's who are not in dispute also provide input to Laughlin for an employee in the department.

Gavrilovich spends a large part of his day reading wire services, other newspapers and editing copy. He also writes small features for the headlines page, which consists of short stories regarding national or world events.

Laughlin prepares the work schedule for the department and approves vacations. There is no overtime in the department.

Based on the record, there is insufficient evidence to find that Gavrilovich is a statutory supervisory. Gavrilovich does not use independent judgment in assigning work and directing employees. He oversees no reporters in Detroit, and the single reporter in Washington who reports to him apparently does so on a part-time basis since she reports to other editors as well. Nonetheless, his direction of the reporter appears to be based on professional news judgment rather than supervisory authority. Gavrilovich's assigning of work to the other ANWEs appears to be routine. Further, the difference in duties between he and the other ANWEs appears to be based on his news experience, which is not enough to confer supervisory authority.

There is no evidence that Gavrilovich is involved in the hiring or firing process and evidence as to his oral input to employee evaluation does not indicate what, if any, weight his input is accorded. Gavrilovich's engaging of freelancers within established parameters is not sufficient to find supervisory status. Further, although Gavrilovich represents the department

³¹ A "feed" is an insert to a main story that helps readers understand specifics of the main story. A feed can be anywhere from a sentence to 12-20 inches of type.

at Employer meetings where the budget is discussed, there is no evidence that personnel matters are discussed at such meetings. *Auto West Toyota*, supra. There is also insufficient evidence that Gavrilovich exercises supervisory authority in the absence of the nation/world editor. Accordingly, I find that Gavrilovich should not be excluded from the unit.

The Copy Department

The copy department has two copy desks: the news desk, which edits stories for the metro and nation/world departments, and the universal desk (also known as the features and business desk), which edits stories for the features and business departments. The department is headed by Copy Desk Chief Alex Cruden,³² who oversees both the universal and news desks. The Employer seeks to exclude Deputy Copy Chief for the Universal Desk (“Universal Deputy”) Will St. John and Deputy Copy Chief for the News Desk (“News Deputy”) Jim Rogers from the bargaining unit. There are about 19 copy editors on the universal desk and 15 working on the news desk. The universal desk is located on the second floor of the Employer’s downtown Detroit office and the news desk is located on the first floor.

Generally, after a story has been written in another department, the story is electronically transferred to a copy desk for final or copy editing. Copy editing includes checking for punctuation, identifying potential liability issues, writing headlines, writing captions under photos and laying out pages. There are two types of copy editors, “rim” and “slot”.³³ A rim editor is responsible for reviewing individual stories and does the first read of a story. A slot editor is responsible for a section and reviews the work performed by the rim editor. A slot editor also may assign work to copy editors. The universal desk has three slots editors per day, one for each section it produces. St. John assigns a head copy editor or regular copy editor to fill the slot editor positions.

The Employer asserts that the deputies are in charge of the daily operations of the department, but the evidence is in dispute. Copy Desk Chief Cruden testified that News Deputy Rogers performs the same duties as the universal deputy. Universal Deputy St. John testified that he assigns work to copy editors based on their area of specialty, experience level and schedules. Copy editors with years of experience tend to be assigned to a particular section while less experienced editors are exposed to various sections. According to St. John, assignments may be changed if an editor becomes burned out or bored with doing the same section. For example, St. John reassigned a senior slot editor who was tired of doing a particular section and replaced her with an editor with less experience. However, Cruden testified that the news deputy also assigns work, but it is routine and based on a schedule

³² Cruden apparently is excluded from the bargaining unit and his supervisory status is not at issue.

³³ There is also a position entitled head copy editor that is part of the bargaining unit. This position is normally given to a senior editor and is paid a higher wage than a regular copy editor.

unless there is a special project which would cause the deputy to override the schedule. The same is true for the universal deputy. The deputies prepare the work schedules for their editors.

Apparently, the hiring process in the copy department is the same as described above in other departments, although normally only about six individuals in his department interview candidates. The deputies interview candidates and make recommendations to Cruden to which he assertedly gives substantial weight. However, there were no examples of this authority provided and since January 1997 there have only been rehires of striking employees, which did not require any input from the deputies.

The universal deputy provides input to employee evaluations. Cruden drafts the evaluations and then consults with St. John for any suggestions. St. John may add comments to the evaluation, such as whether the employee has met deadlines, which is a statistic that St. John keeps. St. John signs the evaluation along with others in upper management. The Employer offered two evaluations in 1998 that were both signed by St. John. Cindy Burton, who previously occupied the news deputy position, also provided input to employee evaluations in the same manner as described above, although no examples of this authority were provided. St. John schedules vacations and approves overtime for his editors, although most overtime is reported after it has already been worked.

St. John determines his own schedule. He edits copy about one day per week and corrects copy editors' work about twice a month, normally by asking the editor to make the corrections. St. John is currently working on a project to redesign the newspaper where his role consists of creating time lines and pushing others to meet deadlines.

The record is insufficient to find that the deputy copy chiefs are supervisors under the Act. The assignment of work to copy editors by the deputies appears to be routine. Also, apparently the slot editors, who are unit employees, are responsible for assigning work as well. Further, that a senior slot editor can request a change of work because of boredom indicates that the relationship between the deputy and copy editors is informal and cooperative rather than supervisory. *Suburban Newspaper Publications*, supra at 157.

There is no supporting evidence that deputies effectively recommend hire. Also, for reasons repeated elsewhere, the deputies' input to evaluations, which the copy chief drafts, is not sufficient to warrant a finding of supervisory status. St. John's involvement in a project to redesign the newspaper appears to be based on his professional expertise and is not a basis to confer supervisory authority. The deputies' coordinating of vacations and approval of overtime appears routine, especially since overtime is reported after the fact. Based on the above, the deputy copy chiefs should not be excluded from the unit.

Director of Library Research

The Employer seeks to exclude Director of Library Research³⁴ Michelle Lavey from the bargaining unit. The library department provides research support to the other departments, orders books, journals and other newspapers, and maintains electronic archives of Employer stories and photos. The library staff consists of four librarians, including Lavey, and two clerks. The library staff is headed by Director of New Media and Library Services Laurie Bennett.³⁵ Lavey reports to Bennett and oversees the other three librarians and two clerks. Bennett spends about 70 percent of her time working with the new media department discussed below, and 30 percent with the library department.

The librarians perform research, answer questions from other departments and the public, and archive the newspaper. One librarian orders magazines and newspapers while another librarian orders the books and catalogs. One librarian is also assigned to handle copyright issues. The clerks are responsible for archiving photos, answering phones and performing some administrative tasks. Lavey makes the librarian assignments based on personal interests and needs of the library. The librarian who orders books has been doing so since about the time Lavey was hired in September 1995. There have been times where Lavey has had an employee redo work, however, there were no examples of this authority provided. However, employees can perform corrections of work on a daily basis apparently without direction from Lavey.

Lavey provides input to employee evaluations. In 1998, per Bennett's direction, she wrote initial evaluations for the five individuals that she supervises and presented them to Bennett, who added her own comments and then presented the evaluation to the employee. The evaluations included the employees' job descriptions, training needs, and strengths and weaknesses. Lavey signed the employees' final evaluations but did not meet with the employees, who met with Bennett. Lavey also recommended to Bennett that two employees receive merit pay in late 1998, which both employees ultimately received. Lavey did not recommend an amount of merit pay these employees should receive and she was unsure as to when they received it. There has been no new hiring in this department since Lavey became director of library research.

Lavey prepares the payroll for the library staff and a financial budget proposal that she submits to Bennett. Lavey sets the schedules for the library staff and approves vacation. Lavey can approve overtime, but overtime is very unusual unless there is a breaking story. She

³⁴ This title was given to Lavey in April 1998 when she was removed from the bargaining unit. She was previously called library research coordinator, and was hired during the course of the strike.

³⁵ Bennett is excluded from the bargaining unit and her supervisory status is not at issue.

approved an unusually large amount of overtime in July 1998, when the library moved to another building, but only after she had consulted Bennett.

Lavey works five days a week, normally from 9:00 a.m. to 5:00 p.m. She also performs research, archives and takes questions from reporters and the public. Lavey performs a lot of reference work and enhancement work, which is making sure stories are properly prepared and have key words, page number and headline on them before they are archived. Lavey, as well as the other librarians, also provide training to other staff members regarding the archive system.

Although it appears that Lavey is the “eyes and ears” for Bennett regarding the library staff, the record is insufficient to find that she is a supervisor under Section 2(11) of the Act. The record indicates that Lavey performs a significant amount of unit work which militates against finding supervisory status. Although, Lavey trains employees, so do the other library staff. In addition, it appears that Lavey’s assignment of work is routine since the librarians have set duties and at least one librarian has been performing her duties for a lengthy period of time. Lavey’s work assignments appears to require little independent judgment since her decisions are partly based on the personal interests of the librarians. Overtime is rare in the department and any major overtime apparently is approved by Bennett. Lavey’s coordinating of work schedules and vacation appears to be routine. Also, her preparation of payroll and the financial budget seem clerical in nature, especially considering Bennett approves such items. Thus, the record is insufficient to find that Lavey uses independent judgment in assigning work and responsibly directing employees.

Further, based on caselaw cited previously, Lavey’s involvement in evaluations is not sufficient to find supervisory status. Moreover, Lavey does not meet with employees to discuss evaluations, which suggests her role in evaluations is limited. While Lavey participated in determining merit pay, the record is insufficient with respect to the impact of Lavey’s recommendation on the final decision to grant merit pay, which rests with upper management. There was no supporting evidence that Lavey effectively recommends hire. Based on the above, the director of library research should remain in the unit.

Deputy Director of New Media

The Employer also seeks to exclude Deputy Director of New Media Carol Morton from the bargaining unit. The new media department is responsible for the Employer’s five websites, including the electronic version of the newspaper. This department did not exist prior to August 1996. The department operates seven days a week and employs five web producers along with Morton. Director of New Media and Library Services Laurie Bennett also oversees the new media department.

Bennett mainly deals with new product development and strategy for the department. Bennett normally arrives at work at about 1:00 p.m. She spends the bulk of her time working with the DNA to develop a revenue strategy and meets with the DNA at least once a week. She generally does not get involved in the daily production of the web sites unless the department is short-staffed or if there is a big event. Morton oversees the daily production of the websites. She is responsible for the other five web producers, who on a daily basis produce the websites by processing photos, fixing text, creating art and designing pages. One producer also has the title of web editor and oversees the "auto.com" website. Morton arrives at work at about 2:00 p.m. three days a week and at 6:00 p.m. on Sundays and Mondays. The other producers normally work from 6:00 p.m. to 2:00 a.m. The department work schedule is primarily fixed.

Morton runs the department on Sundays and in the absence of Bennett. Morton filled in for her frequently due to Bennett's attendance at Knight-Ridder quarterly meetings which last three to four days, an executive leadership program which was a total of three weeks, and a two and half week vacation. Morton attends the 2:30 p.m. interdepartmental meeting apparently in the absence of Bennett. Whoever attends the 2:30 p.m. meeting prepares the budget for the websites and also runs a 6:30 p.m. intradepartmental meeting where assignments are designated. In addition, in the absence of Bennett, Morton prepares the payroll and work schedule for the staff, approves overtime, and signs off on purchase orders. However, many times overtime is approved after employees have already worked.

Morton is a former photographer and designer who uses her expertise in training producers to meet quality standards. Morton evaluates the progress of web producers. Employees call Bennett and Morton if they are sick and Morton has the authority to call in employees to assure the department's staffing needs in this situation, although no examples of this authority were provided. Recently, Morton assigned work and coordinated with other departments for coverage of the Hudson's building implosion. Morton also orders equipment for the department.

The department's hiring process seems to be the same as in other departments already discussed. Morton, as well as the other producers, interview applicants and provide feedback to Bennett. With respect to the department's first hire, Morton posted the job notice on a mailing list and together Bennett and Morton decided that who should be hired. However, Morton can not hire anyone without the approval of upper management. Morton also provides input to employee evaluations by providing Bennett with oral and written comments regarding the other producers. The Employer provided copies of Morton's notes that she submitted to Bennett for two employee evaluations in about November 1998. There is no evidence that Morton signs employees' final evaluations. Employees also provide Bennett with self-evaluations that Bennett uses to prepare their initial evaluations. Morton does not meet with Bennett and the employee to discuss the employee's evaluation.

The record is insufficient to warrant finding that Morton is a statutory supervisor. It appears that Morton's major department responsibilities, i.e., representing the department at meetings and preparing payroll and work schedules, are performed only in the absence of Bennett. While Bennett was away for a significant period of time in 1998, there is no evidence that she would consistently be absent for lengthy periods of time. Furthermore, the record is insufficient to establish that during Morton's temporary substitutions for Bennett, she exercises supervisory authority. *Hexacomb Corp.*, supra at 984. Further, it appears that Morton's assignment of work is based more on her news expertise rather than supervisory authority. Indeed, Morton uses her expertise in assisting the web producers. Further, it appears that the web producers are self-sufficient for the most part, since they normally work from 6:00 p.m. to 2:00 a.m. and Morton only works those hours twice a week.

Morton's participation in the Employer's collective hiring and evaluation processes do not warrant finding supervisory status, as I have found elsewhere. The decision to hire clearly rests with upper management. Moreover, there is no evidence that Morton signs evaluations and she is not present when they are presented to the employees, thus suggesting her role is limited. In sum, Morton should not be excluded from the unit.

Assistant Youth Editor or Yak's Corner Editor

The Yak's Corner ("Yak") is a section of the newspaper comprised of stories and artwork primarily for children. There is a weekly section and a daily section (Monday through Friday) of the Yak. The Employer seeks to exclude Yak's Corner Editor ("Yak Editor") Cathy Collison from the bargaining unit. Collison reports directly to Graphics Director Laura Varon Brown.³⁶ There are five other individuals, three full-time and two part-time, who produce material for the section.

Brown has overall responsibility for the Yak, although she asserts her role is minimal. Brown supposedly relies on Collison to run the Yak, although Collison runs any major problems by her. Brown reads over the stories before they are published. Brown also runs the graphics department and fills in as news editor.

Collison has served as Yak editor since August 1994. Collison normally works Monday-Friday from about 7:30 a.m. to 4:00 p.m. or 5:00 p.m. Brown approved Collison's schedule, although Collison may vary her schedule without notifying Brown. Collison spends about 20-30 percent of her time each month writing stories for the section.

Collison is responsible for the overall production of the Yak and the five employees who work for the section. Collison maintains an electronic file that consists of ideas and

³⁶ Brown is excluded from the bargaining unit and her supervisory status is not at issue.

upcoming events that would be of interest to kids. Collision assigns work to employees on a daily basis. For example, in February 1999 she assigned the assistant Yak editor to cover a toy fair in New York, although she first consulted Brown, who approves any budgeted trips. In 1998, Collision also assigned two employees to go to Japan before the Olympics, although again Brown approved the budget for the trip. In addition, Collision can ask reporters from other departments to write stories for the section. Collision obtains photos for the section by filling out an electronic photo request that goes to the photography department. However, reporters may also fill out requests for photos. Collision serves as the point person for the section in dealing with the DNA, who coordinates Yak visits to schools and other events.³⁷ Collision attends a weekly interdepartmental meeting on behalf of the section where each department describes what material it will feature in the newspaper the following week. Collision can arrange for the use of freelancers and determine their payment. However, freelancers are normally paid according to the Employer's standard rate, which is between about \$75.00 and \$100.00.

Collision also provides input to Brown for employee evaluations. The Employer provided examples of two evaluations that were drafted by Brown in October and November 1998, respectively, where Collision provided input and signed the evaluations. Collision is not present when the evaluations are given to the employees. Apparently from the record, Collision does not play a significant role in hiring.

Brown prepares the work schedule for the staff, but it is flexible. Collision can approve changes to the work schedule. Also, Collision can approve minimal overtime, but Brown signs all overtime slips and approves major overtime.

The record is insufficient to find that the Yak's Corner editor is a statutory supervisor. It appears that Brown retains substantial control over the section. Indeed, Collision must seek approval from Brown on all budgeted trips and runs any major problems by Brown. Also, Brown prepares the work schedule and signs all overtime slips. In assigning stories to reporters, Collision uses her news judgement to come up with story ideas, which is not sufficient to confer supervisory authority. Moreover, it does not appear that Collision can direct reporters from other departments to write for the Yak. Instead, she asks the reporters if they can write the story and apparently works out an arrangement with the reporter's assistant editor. Thus, there is insufficient evidence that Collision uses independent judgment in assigning work and directing employees.

Further, there is no supporting evidence that Collision effectively recommends hire. Also, Collision's input in evaluations, which she does not present to the employee, is not enough to confer supervisory status. Finally, her ability to secure freelancers, as explained

³⁷ The Yak sometimes sends its mascot and other employees to visit area schools to read to children. Collision does not normally visit schools herself.

elsewhere, is not sufficient to find supervisory status. Therefore, Collison should not be excluded from the unit.

Consequently, based upon the foregoing and the record as a whole, I conclude that the petitioned-for positions do not possess supervisory authority within the meaning of Section 2(11) of the Act and, therefore, they should not be excluded from the unit.

IT IS HEREBY ORDERED, that the Employer-Petitioner's request to exclude the positions of assistant metro editor, assistant business editor, deputy design director, assistant youth editor or Yak's corner editor, assistant sports editor, preps sports coordinator, assistant features editor, deputy copy chief, deputy director of new media, director of library research and assistant nation/world editor from the instant unit is denied.³⁸

Dated at Detroit, Michigan, this 14th day of October, 1999.

(SEAL)

/s/ William C. Schaub, Jr.
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177-8520-1600
177-8520-2400
177-8580-4700
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³⁸ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the **National Labor Relations Board**, addressed to the **Executive Secretary, 1099 14th Street NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by **October 28, 1999**.